



City of Fairfax, Virginia

City Council Regular Meeting

Agenda Item # 8e
City Council Meeting 9/23/2014

TO: Honorable Mayor and Members of City Council

FROM: Robert Sisson, City Manager *RS*

SUBJECT: Public hearing and Council action on an appropriation resolution in an amount not to exceed \$20,000,000 to satisfy the City's obligation due to Fairfax County Water Authority pursuant to the terms of the January 3, 2014 Asset Purchase Agreement and Promissory Note.

ISSUE(S): Whether or not to approve an appropriation resolution in an amount not to exceed \$20,000,000 to satisfy the City's obligation due to Fairfax County Water Authority pursuant to the terms of the January 3, 2014 Asset Purchase Agreement (net buy-in agreement, to incorporate the City's water customers into Fairfax County Water Authority's water system) and Promissory Note.

SUMMARY: On January 3, 2014, the City entered into a net buy-in agreement, to incorporate the City's water customers into Fairfax County Water Authority's (Fairfax Water) water system. City of Fairfax water customers became retail customers of Fairfax Water on that date and the City's Water Utility effectively ceased operations. The agreement also provided for the sale and transfer of the City's Water Utility assets, which were located in Fairfax Water's new service area, to Fairfax Water. The net transaction cost of \$20,000,000, less approximately \$1,000,000 credited to the City for certain capital improvements funded by the City, is due, but not payable to Fairfax Water until January 2021. The outstanding balance, of approximately \$19,000,000, is not subject to interest for the first five years, but will accrue interest at the annual rate of three percent in years six and seven.

As the City has use of these dedicated funds interest free for the initial five year period, City staff and the City Treasurer analyzed available investment opportunities in terms of security of principal, liquidity and return on investment. Acceptable investment options offer less than a 0.15 percent return for one year instruments and less than a 1.85 percent return for five year maturities. As an alternative, City staff and Fairfax Water negotiated an "early payment discount" on the approximate \$19,000,000 outstanding principal balance. The "early payment discount" option provides the following advantages not obtainable in the financial markets (1) guaranteed security of principal, (2) eliminates liquidity risk (3) additional financial benefit of approximately \$1,330,000 (or about \$255,000 if City water rates are reduced 18 months earlier than required), (4) reduction of City debt, (5) guaranteed receipt of financial benefit, and (6) significant incentive to Fairfax Water to expedite water rate reductions.

FISCAL IMPACT: The City Fund Balance will realize a minimum increase of about \$255,000 or a maximum increase of about \$1,330,000.

RECOMMENDATION: Approve an appropriation resolution in an amount not to exceed \$19,000,000 to satisfy the City's obligation due to Fairfax County Water Authority.

ALTERNATIVE: Do not approve the appropriation resolution.

RESPONSIBLE STAFF/
POC: Assistant City Manager

COORDINATION: Treasurer, City Manager, City Attorney, Financial Advisors

ATTACHMENTS: Resolution, Payment Agreement, Financial Summary, Sample Motion

PAYMENT AGREEMENT

THIS **PAYMENT AGREEMENT** (this "Payment Agreement") is entered into on the ___ day of September, 2014, by and between the **FAIRFAX COUNTY WATER AUTHORITY**, a political subdivision and independent water authority in the Commonwealth of Virginia ("FCWA") and **THE CITY OF FAIRFAX, VIRGINIA**, a Virginia municipal corporation (the "City").

RECITALS

A. FCWA and the City are parties to an Asset Purchase Agreement, dated January 3, 2014, pursuant to which FCWA acquired certain water system assets of the City (the "Agreement"). In connection with the transactions described in the Agreement, the City made and delivered to FCWA a Confessed Judgment Promissory Note, dated January 3, 2014, in the principal amount of \$19,635,079.08 (the "Note").

B. The Note provides that the City must (i) begin making interest payments commencing on the fifth anniversary of the Note, and (ii) pay all unpaid principal, interest and other sums due thereunder on the seventh anniversary of the Note. The Note permits, but does not require, the City to prepay the amounts due under the Note at any time.

C. FCWA has requested that the City prepay the Note so that FCWA can fund certain operations relating to its water system, and the City has agreed to prepay the Note, all in accordance with the terms of this Payment Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, FCWA and the City agree as follows:

1. Principal Balance of the Note. As of the date of this Payment Agreement, the outstanding principal balance of the Note is \$19,000,000 (the "Outstanding Principal Balance").

2. City Payment. In full satisfaction of the Note, the City will pay to FCWA the amount of \$16,962,634 (the "City Payment"). The City Payment equals the Outstanding Principal Balance minus the Early Payment Discount. The term "Early Payment Discount" means an amount equal to \$2,037,366, which was determined by adding together the present value of two interest calculations, the first (\$272,845) being interest at an Annual Percentage Rate of [As of 9/15/14, 1.930%, determined by averaging FW's All-in interest rate using the Bloomberg Bond Buyers Fund Index and the average of the Bloomberg Treasury & Agency one-year yield] applied to the Outstanding Principal Balance over a period of nine (9) months from October 1, 2014 to July 1, 2015, and the second (\$1,764,521) (the "Incentive Payment Base") being interest at an Annual Percentage Rate of [As of 9/15/14, 2.785%, determined by averaging FW's All-in interest rate using the Bloomberg Bond Buyers Fund Index and the average of the Bloomberg Treasury & Agency five-year yield] applied to the Outstanding Principal Balance over a period of forty-two (42) months, which is the number of months from July 1, 2015 to the point when interest payments would have become due under the Note.

3. City Payment Date. The City Payment will be paid to FCWA on or before October 1, 2014.

4. Reduction Incentive. If FCWA achieves the rate reductions described in Section 5.8(d) of the Agreement (the "Rate Reductions") by July 1, 2015, the City will pay the Incentive Payment to FCWA in the amount of \$1,801,251 on or before July 1, 2015. The amount of this payment will be determined by applying a nine month future valuation to the Incentive Payment Base.

5. No Change to the Agreement. This Payment Agreement is not intended to, and does not, amend or modify any term of the Agreement.

6. Entire Agreement; Amendment. This Payment Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties with respect thereto. This Payment Agreement may only be amended in a writing signed by the parties.

7. Governing Law. This Payment Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to the conflict of laws principles thereof.

8. Jurisdiction. FCWA and the City each irrevocably submit to the exclusive jurisdiction of (a) the state courts of the Commonwealth of Virginia having proper jurisdiction and which are situated in Fairfax County and the appropriate appellate courts therefrom, and (b) the United States District Court for the Eastern District of Virginia and the appropriate appellate courts therefrom, for the purposes of any suit, action or other proceeding arising out of or relating to this Payment Agreement.

9. Waiver. FCWA AND THE CITY EACH IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS PAYMENT AGREEMENT.

10. Assignment. This Payment Agreement and each party's respective rights hereunder may not be assigned without the prior written consent of the other party.

11. Notices. All communications, notices and disclosures required or permitted by this Payment Agreement shall be given in the same manner as required by the Agreement.

12. Counterparts. This Payment Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Payment Agreement. Copies of executed counterparts transmitted by electronic transmission service shall be considered original executed counterparts.

[Remainder of page intentionally left blank; signatures appear on following page.]

IN WITNESS WHEREOF, the parties have caused this Payment Agreement to be duly executed as of the day and year first above written.

Attest:

FAIRFAX COUNTY WATER AUTHORITY

By: _____
Philip W. Allin
Chairman of the Board

CITY OF FAIRFAX, VIRGINIA

By: _____
Robert L. Sisson
City Manager

Approved as to form:

Office of the City Attorney
City of Fairfax, Virginia

Signature page to Payment Agreement

**City of Fairfax
Financial Summary
Early Payment Discount Versus Market Return on Investment**

Scenerio I - Net Present Value of Additional Savings Realized if the Water Rate Reduction is Achieved by July 1, 2015:

	<u>Investment Market</u>		<u>Prepayment Discount</u>		<u>Net Benefit</u>
	<u>Rate</u>	<u>\$</u>	<u>Rate</u>	<u>\$</u>	<u>Realized</u>
10/1/2014 - 7/1/15	0.12%	\$16,964	1.93%	\$272,845	\$255,881

Scenerio II - Net Present Value of Additional Savings Realized if the Water Rate Reduction is not Achieved by July 1, 2015:

	<u>Investment Market</u>		<u>Prepayment Discount</u>		<u>Net Benefit</u>
	<u>Rate</u>	<u>\$</u>	<u>Rate</u>	<u>\$</u>	<u>Realized</u>
10/1/2014 - 7/1/15	0.12%	\$16,964	1.93%	\$272,845	\$255,881
7/1/15 - 1/1/19	1.04%	<u>\$689,496</u>	2.79%	<u>\$1,764,521</u>	<u>\$1,075,025</u>
Totals		\$706,460		\$2,037,366	\$1,330,906

RESOLUTION NO. _____

BE IT RESOLVED, by the City Council of the City of Fairfax, Virginia, that the following appropriation is made for the twelve (12) month period beginning July 1, 2014, and ending June 30, 2015:

Water Fund

Due to Fairfax Water

\$19,000,000

Introduced: September 9, 2014

Adopted: _____

Mayor

ATTEST:

City Clerk

The vote on the motion to approve was recorded as follows:

VOTE:

M. DeMarco	_____
J. Greenfield	_____
N. Loftus	_____
D. Meyer	_____
J. Miller	_____
E. Schmidt	_____

SAMPLE MOTION

“I MOVE TO APPROVE AN APPROPRIATION RESOLUTION IN THE AMOUNT NOT TO EXCEED \$19,000,000 TO SATISFY THE CITY’S OBLIGATION DUE TO FAIRFAX COUNTY WATER AUTHORITY PURSUANT TO THE TERMS OF THE JANUARY 3, 2014 ASSET PURCHASE AGREEMENT AND PROMISSORY NOTE.